IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 13269 of 2006(D)

OS.159/2002 of MUNSIFF COURT, THALASSERY

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PETITIONER:

K.P.NANDINI,
D/O.P.P.KUNHIKKANNAN, AGED 55 YEARS,
NOW RESIDING AT KOMATH HOUSE,
MANIYUR AMSOM, P.O.CHEKKIKULAM,
DIST. KANNUR.

BY ADV. SRI.E.V.NAYANAR
SMT.VIDHYA. A.C

RESPONDENTS:

HARIDASAN, S/O.P.P.KUNHIRAMAN,
AGED 62 YEARS, RESIDING AT ATTADAPPA AMSOM & DESOM
P.O.ATTADAPPA, DISTRICT KANNUR.

BY ADV. SRI.K.V.SOHAN
SMT.SANJANA R.NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.13269 OF 2006

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Dated this the 27th day of November,2006

JUDGMENT

Petitioner is the plaintiff and respondent is the defendant in O.S.159/02 of Munsiff Court, Thalassery. Petitioner is challenging Ext.P15 order passed by the Munsiff allowing Ext.P15 application filed under Order 26 Rule 10 of C.P.C to remit the report back to the Commissioner. Case of the petitioner is that the report was originally filed and at the instance of the respondent it was remitted back and again petitioner filed a petition to remit the report which was dismissed under Ext.P10 order and without considering the objection, Ext.P15 order was passed. The argument of the learned counsel appearing for respondent is that subsequent to the filing of further report by the Commissioner, plaint was amended as per Ext.P13 application and therefore it is necessary to direct the Commissioner to submit a further

report and therefore there is no reason to interfere with Ext.P15 order.

2. The petitioner had filed Ext.P14 application. It was contended that when the Commissioner has already submitted a report and it was remitted and another report was filed and application to remit that report was dismissed, another application for the same purpose will not lie. Unfortunately learned Munsiff did not consider the objections at all. The application was allowed as follows:-

> "Allowed. Same Commissioner is
> appointed. Commissioner Report.
> Pay batta Rs.1000/-."

This order does not show that court below had considered the objection raised by petitioner. It also does not show that a further report is necessary for disposing the case. In such circumstance, Ext.P15 order dated 7.3.06 is quashed. The learned Munsiff is directed to pass appropriate order in Ext.P15 application in

accordance with law after considering the objection raised by petitioner and after hearing the parties.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006